



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

March 11, 2011

Colonel Steven Roemhildt
District Engineer
U.S. Army Corps of Engineers
Mobile District, Regulatory Division
Attn: Cindy House-Pearson
218 Summit Parkway, Suite 222
Homewood, Alabama 35209

Subject: Public Notice SAM-2011-00015-CHE; Grand River West Retail, US Steel Corporation

Dear Colonel Roemhildt:

The U.S. Environmental Protection Agency (EPA), Region 4, has reviewed Public Notice (PN) number SAM-2011-00015-CHE, dated January 14, 2011, for construction of a 20-acre retail development with associated infrastructure and stormwater management facilities. The proposed work would involve impacts to 2,395 linear feet of perennial and intermittent stream and 0.1 acres of wetland, including fill of perennial stream for construction and stormwater management, in-stream stormwater treatment, and other construction-related impacts. EPA is concerned that the project does not comply with the Clean Water Act (CWA) Section 404(b)(1) Guidelines (Guidelines), implemented through 40 CFR Part 230, foremost in that the activities are not water-dependent, and would impact valuable aquatic resources: the immediately adjacent Cahaba River and tributaries to it.

The Cahaba River, immediately north of the site, is an Outstanding Alabama Water, important ecologically in Alabama and home to a rich diversity of organisms. It is Alabama's longest remaining stretch of free-flowing water, and is the primary drinking water source for one fifth of the state's population. The Nature Conservancy ranks the Cahaba Watershed as the 29th most critical for protecting biodiversity out of 2,000 watersheds in the United States. No other river in North America has more fish species per mile than the Cahaba; of 131 fish species, 18 are found nowhere else outside of the Mobile River Basin. EPA considers the Cahaba River, its tributaries and associated wetlands to be Aquatic Resources of National Importance (ARNI).

Alternatives Analysis

According to 40 CFR Part 230.10(a), "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." This calls for an analysis of alternatives that meet an appropriately defined and scaled purpose and need. When activities associated with proposed impacts to special aquatic sites are not water-dependent, practicable alternatives that do

not involve special aquatic sites are presumed to be available. Given that construction of retail establishments is not water-dependent, alternatives to the proposed impacts should be examined and the least environmentally damaging practicable alternative selected. The effort noted in the PN to minimize sprawl (i.e., distribution of the facilities among multiple sites), is commended.

However, it appears that there are many opportunities to avoid impacts altogether. Alternative sites and configurations offer opportunities to leave streams and their buffers intact, possibly incorporating them into green space that would add value to the development. Low impact development approaches can provide additional protections for water quality, as well. A complete alternatives analysis is requested in order to be able to perform an effective review of the proposed work.

Water Quality

According to 40 CFR Part 230.10(b), no discharge may be authorized if it causes or contributes to violations of any applicable State water quality standard or violates any applicable toxic effluent standard; Section 230.10(c) further prohibits discharges that would cause or contribute to significant degradation of the waters of the United States. The Cahaba River is listed as impaired for phosphorous and sedimentation, with a Total Maximum Daily Load established for phosphorous in 2006. The probable sources contributing to these impairments include site clearance and urban runoff/storm sewers. Clearing this site for development, creating acres of impervious surface (buildings, parking lots, roads), and using a tributary to the Cahaba for stormwater treatment are very likely to contribute to these impairments.

Clarification is needed on the nature of impacts, such as the in-stream stormwater treatment. Alabama Department of Environmental Management's (ADEM) code R. 335-6-12-.21(2)(b)3 prohibits the installation or use of instream or within-bank sediment storage traps or deposition areas, or other sediment storage/detention Best Management Practices, in waters of the State to control/treat stormwater runoff from construction/activity.

Mitigation

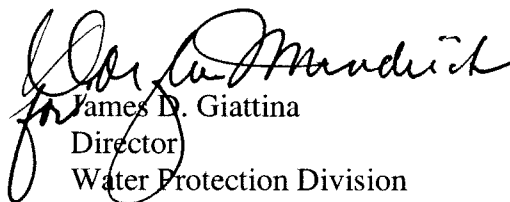
Section 230.10(d) of the Guidelines prohibits issuance of a permit to fill aquatic resources, "unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem." Specifically, no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem. Direct impacts are likely avoidable altogether, and indirect impacts can likely be minimized with low impact development approaches. Once sufficient information is available to determine whether the project alternatives, then avoidance, then minimization components comply with the Guidelines, we welcome the opportunity to further discuss appropriate compensatory mitigation for this project.

Based on the above observations, EPA has determined that the project, as currently proposed, does not comply with the Guidelines. EPA finds this project is not water-dependent and may have substantial and unacceptable adverse impacts on ARNIs. Therefore, we

recommend denial of the project, as currently proposed. To more fully evaluate the proposed work, we request additional information as described above and the opportunity to participate in a site visit. This letter follows the field level procedures outlined in the August 1992 Memorandum of Agreement between EPA and the Department of the Army, Part IV, paragraph 3(a) regarding Section 404(q) of the CWA.

Thank you for the opportunity to comment on this PN. If you have any questions regarding these comments, please contact Rosemary Hall (Hall.Rosemary@epa.gov or 404-562-9846) or Jennifer Derby (Derby.Jennifer@epa.gov or 404-562-9401).

Sincerely,



James D. Giattina
Director
Water Protection Division

cc: Ms. Casey Ehorn, Mobile District Corps

Ms. Brandy Bowen, ADEM

Mr. Aaron Peters, ADEM

Mr. Josh Rowell, FWS

Mr. Matthew Marshall, ADCNR

Mr. Randall Haddock, Cahaba River Society

Mr. Mitchell Reid, Alabama Rivers Alliance